

**CITY OF CHULA VISTA
MINUTES
MOBILEHOME RENT REVIEW COMMISSION**

**Wednesday, June 16, 2010
6:00 P.M.**

**CITY HALL
COUNCIL CHAMBERS**

CALL TO ORDER/ROLL CALL – 6:01 P.M.

PRESENT: Brett Davis, Steve Epstein, Rudy Gonzalez, Sam Longanecker, Cesar Padilla, Ramon Riesgo, Pat LaPierre

ABSENT: N/A

STAFF: Stacey Kurz, Senior Project Coordinator
Simon Silva, City Attorney

1. APPROVAL OF MINUTES

May 19, 2010

Member Davis made a motion to approve the minutes as corrected. Member Riesgo seconded the motion. Correction to the minutes – Commissioner Longanecker was not the member who requested the reason for members abstaining. Staff member Kurz suggested the phrase “members requested” and made an additional correction to the minutes. The phrase “donated time by affected residents” was changed to “time was donated by”. Chair Padilla requested a grammatical change to Item 3, line 3 to read “based on”. All members agreed to approve the approval of the minutes as corrected.

2. BRENTWOOD MOBILE HOME PARK HEARING CONTINUATION

The Commission had closed the public discussion from the May 19th hearing and this meeting will continue the Commissioner’s discussion on the proposed rent increases for two hundred (200) spaces at Brentwood Mobile Home Park, located at 1100 Industrial Boulevard in Chula Vista.

Staff Kurz provided an update on what had occurred since the last meeting (May 19th). As noted, the public testimony had been closed and there was a request by the Commission to see if there was additional information regarding the acquisition of the park and/or knowledge regarding the Title 25 code violations that had existed. A request was made of both residents and the park owner to submit any additional information that was available. All items received were included in the staff report as Attachments 2A and 2B. In addition, several items presented at the May 19th hearing that were requested by the Commission were included in the packet (Attachments 1A-1D). Staff Kurz further noted an error in the staff report dated May 3, 2010, Table 5 (exhibit 3 of May 19th packet), which averaged the affected spaces at Brentwood of \$531 and it should have indicated the whole park at \$556. Further, at the time the March rent roll was given to staff there were approximately 11 vacant spaces, which were excluded from the average.

Staff Kurz also indicated there was a letter received within the last week from the Public Utilities Commission (PUC) indicating a complaint had been filed. That letter is included in the Commission packet in the resident portion as Attachment 2. The PUC has received that letter and it does indicate that it could take up to a month to review the complaint. On that letter, it reflects that the complaint was filed through the PUC for the Pacific Gas & Electric and as we know it is San Diego Gas & Electric. A letter from the PUC confirming that it is San Diego Gas & Electric was received.

Attorney Silva stated that he has had an opportunity to look at the response from the PUC as well as the initial complaint. After reading those documents, as well as the relevant case law, it is the Attorney’s recommendation that the item should be tabled for one month to let the PUC make a determination as to what an appropriate pass through would be. Particularly since the amount of expenditures spent on the

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electrical constitutes a large portion of the Capital Improvements that are being claimed – almost half. There are several decisions where guidance is provided on this case including: PUC D95-08-056, a Court of Appeals decision (Hillsborough vs. Public Utilities Commission), and Public Utilities Code Section 73.5, subdivision G. Attorney Silva is concerned about prolonging the decision, but because of these rulings, and the fact that the PUC has indicated it may respond within 30 days, he expressed his position that it would be in everyone's best interest to wait for a PUC decision.

Commissioner Gonzales inquired as to whether Attorney Silva would be presenting the City's position to the PUC and Attorney Silva indicated that the City would likely provide the PUC with information identifying the City's perspective of the issues. Commissioner Gonzales noted that Dr. McCann's report on page 3, paragraph 3, first line, discussed the replacement of the electrical system vs. reinforcement or upgrade.

Chair Padilla asked if there was any further discussion or is there was a new recommendation to table the item for a month until there is a recommendation from the PUC.

Park owner representative Dahlin requested to speak to the issue that the City Attorney has raised about tabling the decision for a month. Mr. Dahlin does not believe the PUC will have a factual and binding determination within a month. He suggested that, if the electrical element was in question, the commission delete that amount from the rent increase until a PUC decision was reached and/or that the portion deemed in dispute be collected into a segregated account to hold that money.

Member Davis made a motion to table the matter indefinitely until the Commission hears from the PUC. There was no second and the motion died.

Chair Padilla asked staff to reconfirm their recommendation. Staff Kurz reaffirmed that the recommendation was to establish the market rent which was in the mid-\$500 to \$600 range based on comparable rents and raise those rents below the market value up to market, but not to exceed the \$96 over 3 years.

Chair Padilla asked for further discussion.

Commissioner Gonzales commended the efforts of the operators of the mobilehome park and their efforts in upgrading the park, however indicated there were a few items in the request that he did not agree should be passed through, including the replacement of the electrical distribution system. He again referenced the report from Mr. McCann and letter from Mr. Dahlin that state the CPUC rules where an electrical expense can be passed on to the customer and the terminology used in their reports as "replacement" rather than reinforced or upgraded. He further indicated that he believed the fire hydrant system is an expected health and safety related item. Commissioner Gonzales understood that the 9 new sites being constructed would not be under rent and therefore their cost should not be passed on to the current residents. And finally, he expressed that the lease extension should not be passed through since the people that benefited from this cost are the land owner and the park operator. Commissioner Gonzales made a motion that the rent increase be reduced from \$96 over three years to \$27, disallowing \$69 which is the pro-rated share from the information that the Commission was given. There was no second to the motion and the motion died. Discussion continued.

Commissioner Epsten somewhat agreed with Commissioner Gonzalez's comments, however believed the City Ordinance allows ground lease as an expense that can be passed on. He does not agree with the electrical exemption due to the 30 amp system being upgraded to a 100 amp system, therefore believes the system was replaced and upgraded. There was discussion regarding the past owners and how they collected money from SDG&E but never invested it back into the park. Commissioner Epsten indicated that the new owners made necessary improvements and should be commended for doing so.

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Commissioner Gonzales again directed the Commission's attention to the terminology used in regards to the electrical system.

Chair Padilla determined that there was one Commissioner that believed it should be considered in the rent increase and another Commissioner that states that, because the way it was written, he does not believe it should be included. As the City Attorney's Office has indicated, we are not here to determine the legality of the electrical system being allowed, it is the responsibility of the PUC to determine that. This leads us back to the choice of whether we should we wait to hear from the PUC. Chair Padilla expressed his discomfort making a decision prior to all information being obtained.

Commissioner Davis made a motion to table the item until a response from the PUC is received. There was a second to the motion and there was further discussion. Commission Gonzales wants to be fair to the operator and does not feel the PUC will make a clear determination and if it does, will not be within 30 days. He feels that if we reference the documents we have from legal counsel and the wording of the documents the Commission could make that determination. There was extensive discussion between Commissioner Gonzales and Mr. Dahlin regarding the use of terms replacement, repair, upgrade and reinforce. Based on the conversation, Commissioner Gonzales will now also support the idea that the item be tabled and to allow the PUC to make the decision as to allowable expenses.

Commissioner Riesgo wanted to make it clear that if we waited for the PUC's decision we may have to wait 30 days, or 6 months or a year. According to what has been presented by the Attorney's office and the park owners, he feels that there should be a neutral entity making the final determination as to allowable expenses to be passed through.

Attorney Silva advised the Commission that they do have the ability to determine whether or not it would allow or not allow the electrical improvement or upgrade to be a factor based on the evidence they have. The issue is whether or not that decision would be consistent with the determination of the PUC. One of the cases that was researched was of a city who allowed expenses to be passed on and the PUC determined they were not allowable, thus causing a refund to residents. His recommendation would be to table the item for a reasonable amount of time (45 days) and in the meantime he will be conducting further research. The other issue is that part of the Muni Code requires that rent review try to be completed within 120 days.

Chair Padilla requested a clarification as to 120 days from what date. Attorney Silva advised from the receipt of the notice of the dispute of the rental increase. The rental increase was proposed on January 31st and a petition was received on February 9th. Attorney Silva clarified that the 120 days was a goal not a mandatory time frame and Commissioner LaPierre concurred.

Commissioner Gonzales, in fairness to the park owner, wanted to support a time certain motion and suggested no more than 45 days. Commissioner Davis wanted to leave it open-ended and wait for a decision by the PUC. The amendment failed and a vote was taken on the motion to leave it open until a determination was made by the PUC regarding the electrical factor. The motion failed.

A new motion was made by Commissioner Gonzales to allow a new rent increase of \$27 over a 3 year period that would exclude the question of the electrical system replacement, the fire hydrant system, the construction of 9 new sites and the lease extension – that those not be charged as part of the increase. There was no second and the motion failed.

Commissioner Epstein asked if the one-time lease extension was an allowable expense. Chair Padilla indicated that there had been a question regarding that at the last meeting and it was determined as an allowable expense. He noted that the Commission does have the ability to determine that.

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Commissioner Riesgo made a motion of tabling the item for no more than 45 days or until the PUC has made a determination. The motion was seconded. There was discussion as to the next scheduled meeting being July 15 (30 days) or waiting 45 days (in August). Chair Padilla suggested that if the Commission meets in 45 days a decision be made. Staff member Kurz advised the Commission that they do have the ability to pass the rent increase retro-actively to the anniversary date to where the initial notice was given. Chair Padilla asked for some clarification as to whether, if the rent increase was retroactive, if the tenant would have to submit a lump-sum amount. Staff member Kurz stated that there was nothing in the Ordinance that would prevent or require that.

Commissioner Gonzales asked for clarification of the May 1st date. Staff Kurz indicated that notices were provided at least 90 days prior to the first anniversary date of May 1st, but not all residents were to receive the increase that date, some were a month or more after that date. Commissioner Gonzales also requested a clarification as to what exactly we were asking of the PUC. Attorney Silva stated that we were requesting a determination as to whether the electrical upgrade and/or replacement was a permissible pass-through to calculate the capital improvement. Commissioner Gonzales stated that because of the verbiage and the report by Dr. McCann, that that will be the crux of the decision. Attorney Silva said that it could be a factor in their decision, but that he thought they would look at the invoices, Dr. McCann's letter and the information we provide. Chair Padilla stated that he felt the PUC would gather information from both parties and that the Commission was looking for clarification as to whether it is a replacement or an upgrade. Chair Padilla also clarified that it was not something that the Commission is submitting to the PUC, it is from a complaint filed by a resident of the park and the Commission wants to be sure the information provide to the PUC is complete so as to be fair to everyone.

Chair Padilla qualified the motion which was to table the Action Item Two – a rent increase in Brentwood Mobilehome Park affecting 200 residents until we hear from the PUC as to whether the electrical system is a replacement or an upgrade for no more than 45 days. Motion passed unanimously. Chair Padilla stressed to the residents that if the rent increases are retroactive, that they will be required to pay them.

3. STAFF COMMENTS

None.

4. MEMBER'S COMMENTS

Commissioner Epsten suggested that in the next 45 days, the residents and park owner could get together and come to some sort of compromise.

5. PUBLIC COMMUNICATIONS

There were two speaker slips, but both were regarding the complaint that was issued and since that has been addressed, no one spoke.

6. ADJOURNMENT – Meeting was adjourned at 7:08 p.m.

Recorder, Stacey Kurz